Cont A1

35. (NEW) A method for playing a competitive card game simulating wrestling matches in accordance with claim 32, further including the step of providing a plurality of playing cards separated into a number of stacks corresponding to players playing the game.

36. (NEW) A method for playing a competitive card game simulating wrestling matches in accordance with claim 35, wherein, during the providing step, the card provided to each player is drawn from the stack of each player.

37. (NEW) A method for playing a competitive card game simulating wrestling matches in accordance with claim 32, wherein each card includes an image of a specific wrestler thereon.

REMARKS

The Office Action dated January 30, 2001 has been received and its contents carefully noted. In response thereto, applicant has cancelled all existing apparatus and method claims 1-20 and added new method claims 21-37 in an effort to place the application in condition for allowance. The title has also been changed to -- WRESTLING CARD GAME --. Reconsideration of the rejections of the claims is respectfully requested in view of the foregoing amendments and the following remarks.

Drawings

Regarding the drawings, the Office Action did not include a Draftsperson's Patent Drawing Review PTO-948 or any indication that there were any objections to the formal drawings filed with the application.

Claim Rejections - 35 U.S.C. §§ 102 and 103

Turning now to the rejections under 35 U.S.C. §§ 102 and 103, claims 1, 2 and 4-6 have been rejected as being completely shown by Lott (U.S. Patent No. 5,071,136). Claims 1-20 stand rejected on the grounds of obviousness based on Lott. Applicant respectfully disagrees with these rejections for the following cogent reasons.

The Section 102 rejection of claims 1, 2 and 4-6 is believed to be moot as these claims have been cancelled and no apparatus claims remain in the application.

Lott shows a collectible sports card board game which includes a game board 10 on which the collectible sports cards are placed. Each of the cards has ratings as shown in Fig. 3. Dice are rolled and cards and simulated money are awarded as each player tries to build a baseball team comprising a pitcher, a

catcher, infielders and outfielders. At some point, the players can buy, sell or trade cards. At the end of the game, the money and the ratings on the cards held by each of the players are added to determine the winner.

The object and playing procedures of the play in the present invention are completely different than those found in Lott. The present invention does not include a game board, simulated money, team building or buying/trading/selling cards. The Examiner recognizes some of the deficiencies of Lott and tries to correct the deficiencies by calling most of them obvious without an basis other than sheer speculation. Incredibly, the Examiner points to the claims of Lott to indicate that Lott teaches "a general game apparatus by claiming an apparatus suitable to a representation of a sports player engaged in the playing of a particular position" and then tries to apply these teachings to the present wrestling genre invention which does not even have any positions. It is respectfully submitted that an artisan of ordinary skill would not create a game for a nonposition based sport such as wrestling by looking to a game such as found in the Lott patent involving the filling of positions on a baseball team. The type of obviousness approach being used by the Examiner in this application is so broad and sweeping that essentially any game using dice and cards would be obvious in view of Lott. The unreasonable stretching of the Lott reference becomes painfully

apparent when the Examiner discusses the "concept of punishment" in the last two full paragraphs on page 5 and in the paragraph bridging pages 5 and 6 of the Office Action. Nothing in Lott even vaguely resembles the present applicant's approach to the "concept of punishment."

In addition, in various embodiments of the present invention, the player selects the card based on the statistical, ranking and "Points of Pain" (POP) of the represented wrestler. Thus, in contrast to the remarks by the Examiner in the Office Action in the paragraph bridging pages 4 and 5, the random card selection of Lott differs from the player card selection found in various embodiments of the present invention.

Furthermore, it is only when the Examiner looks to applicant's own disclosure that the Examiner can allege obviousness by modifying the Lott patent in an egregious manner. Without a teaching (other than applicant's own teaching) to prompt the modifications, the rejection is merely improper hindsight reconstruction of applicant's own invention using applicant's own disclosure. Thus, it is not seen how the claimed method can be derived from the Lott patent as this reference simply does not teach or suggest what is set out in the applicant's claims and does not provide the basis for developing the invention to persons having ordinary skill in the art to

which the subject matter pertains. Accordingly, the Examiner's reliance on the Lott patent is not properly grounded and the Section 103 rejection based thereon should be withdrawn.

The Court of Appeals for the Federal Circuit has steadfastly criticized the type of hindsight modification being practiced by the Examiner in this application. "The mere fact that the prior art could be so modified would not have made the modification obvious unless the prior art suggested the desirability of the modification." In re Gordon, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984). See also, e.g., In re Laskowski, 871 F.2d 115, 10 USPQ 2d 1397 (Fed. Cir. 1989); Interconnect Planning Corp. v. Feil, 774 F.2d 1132, 1143, 227 USPQ 543, 551 (Fed. Cir. 1985); In re Grabiak, 769 F.2d 729, 731, 226 USPQ 870, 872 (Fed. Cir. 1985); In re Sernaker, 701 F.2d 989, 994, 217 USPQ 1, 5 (Fed. Cir. 1983).

Accordingly, it is submitted that the present invention as claimed is readily distinguishable from the prior art references for the reasons indicated. Applicant's invention is not disclosed by any of the prior art and there is no fair basis for alleging that applicant's invention is obvious in regard to such prior art. If the invention was obvious, it would have been adopted before in view of its advantages.

Conclusion

In view of the foregoing amendments and remarks, it is respectfully submitted that all the claims are allowable and early favorable action is earnestly solicited. The Examiner is invited to call applicant's attorney if any questions remain following review of this response.

Respectfully submitted,

Dated: 4/27/2001

By _____
K. Bradford Adolphson
Attorney for Applicant
Registration No. 30,927

WARE, FRESSOLA, VAN DER SLUYS
& ADOLPHSON LLP
Bradford Green, Building Five
755 Main Street, P.O. Box 224
Monroe, Connecticut 06468
Telephone: (203) 261-1234
Facsimile: (203) 261-5676